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Report of the United Nations Commission on International Trade Law on the work of its forty-second session

Report of the Sixth Committee

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I. Introduction

1. At its 2nd plenary meeting, on 18 September 2009, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-fourth session the item entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-second session" and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 6th, 22nd and 25th meetings, on 12 October and on 2 and 12 November 2009. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/64/SR.6, 22 and 25).

3. For its consideration of the item, the Committee had before it the report of the United Nations Commission on International Trade Law on the work of its forty-second session.[1]

4. At the 6th meeting, on 12 October, the Chairperson of the United Nations Commission on International Trade Law at its forty-second session introduced the report of the Commission on the work of its forty-second session.

[1] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17).

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II. Consideration of proposals

A. Draft resolution A/C.6/64/L.10

5. At the 22nd meeting, on 2 November, the representative of Austria, on behalf of Albania, Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Belarus, Brazil, Bulgaria, Cameroon, Canada, Chile, China, the Congo, Croatia, Cyprus, the Czech Republic, the Democratic Republic of the Congo, Denmark, the Dominican Republic, Egypt, Estonia, Fiji, Finland, Gabon, Germany, Ghana, Greece, Guatemala, Hungary, Ireland, Israel, Italy, Japan, Jordan, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mexico, Morocco, the Netherlands, New Zealand, Nigeria, Norway, Paraguay, the Philippines, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland and Venezuela (Bolivarian Republic of), subsequently joined by Afghanistan, Benin, India, Iran (Islamic Republic of), Jamaica, Latvia, Malaysia and the Republic of Moldova, introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-second session" (A/C.6/64/L.10).

6. At its 25th meeting, on 12 November, the Committee adopted draft resolution A/C.6/64/L.10 without a vote (see para. 9, draft resolution I).

B. Draft resolution A/C.6/64/L.11

7. At the 22nd meeting, on 2 November, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "Practice Guide on Cross-Border Insolvency Cooperation of the United Nations Commission on International Trade Law" (A/C.6/64/L.11).

8. At its 25th meeting, on 12 November, the Committee adopted draft resolution A/C.6/64/L.11 without a vote (see para. 9, draft resolution II).

III. Recommendations of the Sixth Committee

9. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the United Nations Commission on International Trade Law on the work of its forty-second session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for the rule of law, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples,

Having considered the report of the Commission on the work of its forty-second session,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law on the work of its forty-second session;[1]

2. *Commends* the Commission for the completion and adoption of its Practice Guide on Cross-Border Insolvency Cooperation;[2]

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[1] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17).

[2] Ibid., para. 24.

3. *Welcomes* the progress made by the Commission in its work on a revision of its Model Law on Procurement of Goods, Construction and Services[3] through the consideration of chapter I of the draft revised model law,[4] and encourages the Commission to complete its work on the revised model law as soon as possible;

4. *Also welcomes* the progress made by the Commission in its work on a revision of its Arbitration Rules,[5] on the preparation of a draft legislative guide on the treatment of enterprise groups in insolvency and on the preparation of a supplement to its Legislative Guide on Secured Transactions[6] dealing with security rights in intellectual property, and endorses the decision of the Commission to undertake further work in the area of arbitration, electronic commerce, transport law and commercial fraud and to consider at its forty-third session proposals for future work in the areas of insolvency and security interests, as set out in its report;

5. *Further welcomes* the decision of the Commission to request the Secretariat to hold, resources permitting, an international colloquium on electronic commerce and another international colloquium on security interests;[7]

6. *Notes with appreciation* the decision of the Commission with regard to the publication of its Legislative Guide on Secured Transactions, of a commentary on the United Nations Convention on the Assignment of Receivables in International Trade[8] and of a text discussing the interrelationship of various texts on security interests prepared by the Commission, the International Institute for the Unification of Private Law and the Hague Conference on Private International Law;[9]

7. *Also notes with appreciation* the decision of the Commission to commend the use of the 2007 revision of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce, as appropriate, in transactions involving the establishment of a documentary credit;[10]

8. *Welcomes* the progress made in the ongoing project of the Commission on monitoring the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958,[11] and the preparation of a draft guide to enactment of the Convention to promote a uniform interpretation and application of the Convention;[12]

9. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of, and cooperation on, legal activities of international

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[3] Ibid., *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

[4] Ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 283.

[5] United Nations publication, Sales No. E.93.V.6.

[6] Adopted by the Commission at its resumed fortieth session. See *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), part two, para. 100.

[7] See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 319 and 343.

[8] Resolution 56/81, annex.

[9] See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 315 and 321.

[10] Ibid., para. 357.

[11] United Nations, *Treaty Series*, vol. 330, No. 4739.

[12] See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 360.

and regional organizations active in the field of international trade law, as well as promoting the rule of law at the national and international levels in this field, and in this regard appeals to relevant international and regional organizations to coordinate their legal activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

10. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical assistance and cooperation in the field of international trade law reform and development, and in this connection:

(a) Welcomes the initiatives of the Commission towards expanding, through its secretariat, its technical assistance and cooperation programme, and in that respect encourages the Secretary-General to seek partnerships with State and non State actors to increase awareness about the work of the Commission and to facilitate the effective implementation of legal standards resulting from its work;

(b) Expresses its appreciation to the Commission for carrying out technical assistance and cooperation activities, including at the country, subregional and regional levels, and for providing assistance with legislative drafting in the field of international trade law, and draws the attention of the Secretary-General to the limited resources that are made available in this field;

(c) Expresses its appreciation to the Governments whose contributions enabled the technical assistance and cooperation activities to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, to the financing of special projects and otherwise to assist the secretariat of the Commission in carrying out technical assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission, in the light of the relevance and importance of the work and programmes of the Commission for promotion of the rule of law at the national and international levels and for the implementation of the United Nations development agenda, including the achievement of the Millennium Development Goals;

(e) Notes the request by the Commission that the Secretariat explore the possibility of establishing a presence in regions or specific countries by, for example, having dedicated staff in United Nations field offices, collaborating with such existing field offices or establishing Commission country offices with a view to facilitating the provision of technical assistance with respect to the use and adoption of Commission texts;[13]

11. *Expresses its appreciation* to the Government whose contribution to the trust fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-

[13] Ibid., para. 363.

General,[14] enabled renewal of the provision of that assistance, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund in order to increase expert representation from developing countries at sessions of the Commission and its working groups, necessary to build local expertise and capacities in the field of international trade law in those countries to facilitate the development of international trade and the promotion of foreign investment;

12. *Decides*, in order to ensure full participation by all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the sixty-fourth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

13. *Welcomes*, in the light of the recent increase in membership of the Commission and the number of topics being dealt with by the Commission, the comprehensive review undertaken by the Commission of its working methods, which was started at its fortieth session, with the aim of continuing consideration of the matter during its next sessions and with a view to ensuring the high quality of the work of the Commission and international acceptability of its instruments,[15] and in this regard recalls its previous resolutions related to this matter;

14. *Also welcomes* the discussion by the Commission of its role in promoting the rule of law at the national and international levels, in particular the conviction of the Commission that the implementation and effective use of modern private law standards on international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General, and the fact that the Commission is looking forward to being part of strengthened and coordinated activities of the Organization and sees its role, in particular, as providing assistance to States that seek to promote the rule of law in the area of international and domestic trade and investment;[16]

15. *Further welcomes* the consideration by the Commission of the proposed strategic framework for the period 2010-2011 and its review of the proposed biennial programme plan for the progressive harmonization, modernization and unification of the law of international trade (subprogramme 5), and takes note that, while the Commission noted with satisfaction that the objectives and expected accomplishments of the Secretariat and the overall strategy for subprogramme 5 were in line with its general policy, the Commission also expressed concern that the resources allotted to the Secretariat under subprogramme 5 were insufficient for it to meet, in particular, the increased demand for technical assistance from developing countries and countries with economies in transition to meet their urgent need for law reform in the field of commercial law and urged the Secretary-General to take

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[14] See resolution 48/32, para. 5.

[15] See *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), paras. 373-381.

[16] Ibid., para. 386.

steps to ensure that the comparatively small amount of additional resources necessary to meet a demand so crucial to development are made available promptly;[17]

16. *Recalls* its resolutions on partnerships between the United Nations and non-State actors, in particular the private sector,[18] and its resolutions in which it encouraged the Commission to further explore different approaches to the use of partnerships with non-State actors in the implementation of its mandate, in particular in the area of technical assistance, in accordance with the applicable principles and guidelines and in cooperation and coordination with other relevant offices of the Secretariat, including the Global Compact Office;[19]

17. *Reiterates its request* to the Secretary-General, in conformity with its resolutions on documentation-related matters,[20] which, in particular, emphasize that any reduction in the length of documents should not adversely affect either the quality of the presentation or the substance of the documents, to bear in mind the particular characteristics of the mandate and work of the Commission in implementing page limits with respect to the documentation of the Commission;

18. *Requests* the Secretary-General to continue providing summary records of the meetings of the Commission, including committees of the whole established by the Commission for the duration of its annual session, relating to the formulation of normative texts;

19. *Recalls* its resolution approving the establishment of the *Yearbook of the United Nations Commission on International Trade Law*, with the aim of making the work of the Commission more widely known and readily available,[21] expresses its concern regarding the timeliness of the publication of the *Yearbook*, and requests the Secretary-General to explore options to facilitate the timely publication of the *Yearbook*;

20. *Stresses* the importance of bringing into effect the conventions emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to those conventions;

21. *Welcomes* the preparation of digests of case law relating to the texts of the Commission, such as a digest of case law relating to the United Nations Convention on Contracts for the International Sale of Goods[22] and a digest of case law relating to the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law,[23] with the aim of assisting in the dissemination of information on those texts and promoting their use, enactment and uniform interpretation.

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[17] Ibid., para. 391.

[18] Resolutions 55/215, 56/76, 58/129 and 60/215.

[19] Resolutions 59/39, 60/20 and 61/32.

[20] Resolutions 52/214, sect. B, 57/283 B, sect. III, and 58/250, sect. III.

[21] Resolution 2502 (XXIV), para. 7.

[22] United Nations, *Treaty Series*, vol. 1489, No. 25567.

[23] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

Draft resolution II
Practice Guide on Cross-Border Insolvency Cooperation of the United Nations Commission on International Trade Law

The General Assembly,

Noting that increased trade and investment leads to a greater incidence of cases where business is conducted on a global basis and where enterprises and individuals have assets and interests in more than one State,

Noting also that, where the subjects of insolvency proceedings are debtors with assets in more than one State or are members of an enterprise group with business operations and assets in more than one State, there is generally an urgent need for cross-border cooperation in, and coordination of, the supervision and administration of the assets and affairs of those debtors,

Recognizing that cooperation and coordination in cross-border insolvency cases has the potential to significantly improve the chances for rescuing financially troubled individuals and enterprise groups,

Acknowledging that familiarity with cross-border cooperation and coordination and the means by which it might be implemented in practice is not widespread and that the availability of readily accessible information on current practice with respect to cross-border coordination and cooperation has the potential to facilitate and promote that cooperation and coordination and to avoid unnecessary delay and costs,

Noting with satisfaction the completion and the adoption on 1 July 2009 of the Practice Guide on Cross-Border Insolvency Cooperation by the United Nations Commission on International Trade Law at its forty-second session,[1]

Noting that the preparation of the Practice Guide was the subject of deliberations and consultation with Governments, judges and other professionals active in the field of cross-border insolvency,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for the completion and adoption of its Practice Guide on Cross-Border Insolvency Cooperation;[1]

2. *Requests* the Secretary-General to publish, including electronically, the text of the Practice Guide and to transmit it to Governments with the request that the text be made available to relevant authorities so that it becomes widely known and available;

3. *Recommends* that the Practice Guide be given due consideration, as appropriate, by judges, insolvency practitioners and other stakeholders involved in cross-border insolvency proceedings;

4. *Recommends also* that all States continue to consider implementation of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law.[2]

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[1] See *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), chap. III.

[2] Resolution 52/158, annex.